

weeks. In the end, Cox executed its agreement with Southwestern Bell because of its own business needs, not because the agreement was favorable, or even acceptable.<sup>35/</sup>

The attached Declaration of Jeff Storey describes additional examples of how SBC's implementation of interconnection impedes new competitors.<sup>36/</sup> For example, while Cox attempted to establish interconnection both by establishing trunks between its facilities and SBC's and by using physical collocation, SBC's proposed restrictions and limitations for each of these methods have been generally unacceptable. With respect to establishing trunks, SBC has unreasonably insisted that it needs nearly ten weeks' advance notice to provide such trunks. Such a long service interval makes it difficult to plan for the commencement of service, meet commitments to potential customers or to increase capacity in response to traffic growth.<sup>37/</sup> Equally important, SBC placed restrictions on the use of trunks that have made it unacceptable to use them as a primary means of interconnection.<sup>38/</sup>

SBC's positions with respect to physical collocation, which may in many circumstances be a superior method of interconnection, are even worse. At the outset, SBC requires 119 days advance notice to construct collocation facilities — beginning from the time that a requesting carrier makes a firm order (with substantial down payment), not from the

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<sup>35/</sup> *Id.* at ¶¶ 4-5.

<sup>36/</sup> *See generally* Storey Declaration.

<sup>37/</sup> *Id.* at ¶ 9. SBC refused to even process Cox's service request until the OCC approved the interconnection agreement, and only relented once Cox promised to pay 100 percent of the claimed costs of SBC's trunk provisioning (up to \$30,000).

<sup>38/</sup> *Id.* at ¶ 4 - 5.

time of the initial request.<sup>39/</sup> This notice requirement, in itself, is unreasonably long and unduly delays the provision of service using collocation. In fact, however, SBC responded to Cox's collocation requests in a manner that seems designed to prolong indefinitely the period between the request and the firm order — before the 119-day notice period even begins. Six months elapsed between when Cox initially requested collocation and when Cox was able to make a firm order because of SBC's manner of responding to the request. Specifically, while SBC responded initially to Cox's request for physical collocation on November 14, 1996, SBC submitted three revised responses over a period of months reflecting changes in its costing assumptions and in its assumptions regarding the facilities that Cox would require.<sup>40/</sup>

These changes have not been the result of minor oversights and miscalculations. SBC's initial pricing proposal would have imposed, for a single point of interconnection, a one-time charge of \$377,000 and monthly charges of approximately \$3,200. These utterly unreasonable charges were reduced by a factor of four in subsequent revised proposals, indicating that the initial proposal was not cost-based and was simply intended to discourage physical collocation by making it prohibitively expensive.<sup>41/</sup> Even the price Cox ultimately received is significantly higher than the price charged for physical collocation in other parts of the country. Cox would not have taken interconnection under the initial terms, and only SBC's enormous bargaining incentives and leverage explains why any carrier would ever

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<sup>39/</sup> *Id.* at ¶ 5.

<sup>40/</sup> *Id.* at ¶ 6. The fourth version of SBC's response is the physical collocation appendix to the executed interconnection agreement.

<sup>41/</sup> *Id.* at ¶¶ 7-8.

accept these terms. As a result of SBC's tactics, Cox still has months to wait before it obtains interconnection via physical collocation, even though its request was made over six months ago. Thus, SBC's response to Cox's physical collocation requests effectively have acted as a barrier to entry in Oklahoma.<sup>42/</sup>

SBC's conduct indicates that it not only does not welcome local competition but that, in implementing its interconnection agreements, it will delay and frustrate competitive entry to the maximum extent possible. Section 271 was specifically intended by Congress to create a countervailing incentive by offering BOCs the ability to provide in-region interLATA service once they have opened their local markets to competition. SBC's conduct indicates that prospects for local competition will be decidedly diminished if the incentives of Section 271 are removed by prematurely granting SBC's application at this time. Such a grant would not be in the public interest.

**III. SBC MUST DEMONSTRATE THAT IT IS IN COMPLIANCE WITH THE SEPARATION REQUIREMENTS OF SECTION 272.**

SBC's claims of compliance with Section 272 are similar to its generalized claims of compliance with the checklist. As in that case, SBC's showing consists much more of promises than of performance. While Section 272 compliance is somewhat more prospective than the other requirements for interLATA entry, the Commission should require SBC, to the maximum extent possible, to demonstrate current compliance with these requirements as well.

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<sup>42/</sup> Moreover, at the same time that SBC has been delaying the process of implementing its agreement with Cox, it has also been seeking legislation in Oklahoma that is clearly intended to hamper competitive entry.

There are two areas in particular in which the Commission should demand more than what SBC has chosen to provide in its application.<sup>43/</sup> First, SBC should be required to show what entity is paying the costs of this application. Second, SBC should be required to demonstrate how it will comply with the limitations of Section 272(e)(2).

This application is the first significant activity of SBC's long distance affiliate before the Commission. It is evident, just from the bulk of the filing and the prodigious use of outside experts, that it was an expensive undertaking. There can be little doubt that much more money will be spent by SBC and its affiliates before this proceeding is complete. Moreover, because the only real beneficiary of this application is SBC's long distance affiliate, the principles of Section 272 require that the long distance affiliate, not any other entity, bear the costs of the application process. Thus, this application provides the first real opportunity to test how SBC will implement the accounting requirements of Section 272. If the costs of this application, including all the costs associated with Southwestern Bell's participation, all the costs of consultants and legal fees and all the costs of SBC executive personnel time, are allocated in any manner to any entity other than the long distance affiliate, SBC will have failed the test and its application cannot be granted. It also is critical that the affiliates use of Southwestern Bell personnel and facilities be conducted on the basis required by Section 272, *i.e.*, "on an arm's length basis with any such transactions reduced to writing

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<sup>43/</sup> Cox does not intend to suggest by identifying these concerns that SBC otherwise is in compliance with Section 272, but only to provide examples of areas where further inquiry is required before the Commission can conclude that SBC meets this requirement.

and available for public inspection.”<sup>44/</sup> Otherwise, SBC will not be in compliance with Section 272.

In addition, SBC must demonstrate how it will comply with the limitations in Section 272(e)(2). As Cox previously has described to the Commission, this provision prevents a BOC from, among other things, sharing customer proprietary network information (“CPNI”) with its long distance affiliate unless it makes that information available on the same terms and conditions to unaffiliated entities.<sup>45/</sup> Because availability of CPNI also is subject to specific restrictions in Section 222, the effect of this provision is to limit the BOC long distance affiliate’s access to CPNI to the same extent that third parties’ access is limited. This limitation has particular effects on joint marketing between a BOC and its long distance affiliate, and prohibits certain kinds of joint marketing that would significantly disadvantage third parties. SBC has not shown how it will comply with this requirement and, until it does, its application cannot be granted.

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<sup>44/</sup> 47 U.S.C. § 272(b)(5). Moreover, for the reasons Cox has described in its consolidated petition for reconsideration of the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*, there must be significant changes to the implementation of Section 272 if the purposes of that section are to be achieved. See Consolidated Petition for Reconsideration of Cox Communications, Inc., CC Docket No. 96-149, CC Docket No. 96-150, filed Feb. 20, 1997. See also Consolidated Comments on the Petitions for Reconsideration of Cox Communications, Inc., CC Docket No. 96-149, CC Docket No. 96-150, filed April 2, 1997; Consolidated Reply to the Oppositions to Petitions for Reconsideration of Cox Communications, Inc., CC Docket No. 96-149, CC Docket No. 96-150, filed April 14, 1997.

<sup>45/</sup> See Comments of Cox Enterprises, Inc., CC Docket No. 96-115, filed March 17, 1997.

### CONCLUSION

SBC's strategy in this proceeding is to repeat over and over that competition in the long distance market benefits the public interest. This tautology proves nothing about the merits of SBC's application, which by law must demonstrate that SBC's local exchange market in Oklahoma is open. As shown above, Congress adopted a detailed set of requirements that SBC and any other BOC applicant for interLATA authority must meet, including the checklist and an independent public interest requirement that must be evaluated based on the actual behavior of the applicant. SBC has not met its burden of proving that it has complied with each of these requirements and, consequently, its application is deficient. No amount of repetition of its "long distance competition" mantra can change that basic fact.

For the foregoing reasons, granting SBC's application would be inconsistent with the provisions of Section 271 — and with the public interest. The Commission should deny the application.

Respectfully submitted,

**COX COMMUNICATIONS, INC.**

A handwritten signature in cursive script, appearing to read "Laura Phillips", written over a horizontal line.

Laura H. Phillips  
J.G. Harrington  
Michael S. Schooler

Its Attorneys

Dow, Lohnes & Albertson, PLLC  
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202-776-2000

May 1, 1997

Exhibit A

Declaration of Jeff Storey



## **DECLARATION OF JEFF STOREY**

1. My name is Jeff Storey. I am Director, Network Operations of Cox Communications of Oklahoma City, Inc. I am providing this declaration in connection with the opposition of Cox Communications, Inc. ("Cox") to the application of SBC Communications, Inc., for authority to provide in-region interLATA services in the State of Oklahoma.
2. I am personally familiar with Cox's telecommunications operations in the State of Oklahoma. My responsibilities include participation in the negotiations between Cox Oklahoma Telcom, Inc. ("Cox Telcom") and SBC's affiliate, Southwestern Bell Telephone Company ("SWBT") for an interconnection agreement. They also include implementation of interconnection between Cox Telcom and SWBT and collocation of Cox Telcom facilities at SWBT locations. The information provided in this declaration is based on my personal knowledge.
3. There are several ways to establish interconnection between carriers, including establishing interconnection trunks on SWBT facilities or by physical collocation of interconnection facilities. Cox Telcom has explored both of these methods in its negotiations and other discussions with SWBT. SWBT's implementation of these methods, however, creates significant barriers to interconnection.
4. First, SWBT places restrictions and limitations on the use of interconnection facilities provisioned by SWBT. Because of these limitations, Cox Telcom has opted to pursue physical collocation as the primary means of interconnection.
5. Physical collocation provides an alternative, often superior method for interconnection. Unfortunately, SWBT's physical collocation proposals also are unacceptable. First, SWBT requires 119 days' notice to construct collocation facilities. This time begins from the time a requesting carrier makes a firm

order (which requires a substantial down payment), not from the time of the initial request. This time period does not include time required after construction has been completed to ensure interoperability and reliability of the interconnection, which can increase the interval between the start of construction and the beginning of usable service by a significant margin. Thus, there are significant delays before a carrier can obtain physical collocation at any SWBT facility.

6. In my experience, the request process itself also adds significant delays to obtaining physical collocation with SWBT. Cox's initial request for physical collocation was made on October 15, 1996. SWBT's initial response to that request was mailed on November 14, 1996. This response was followed by two revised responses, on November 21, 1996 and January 22, 1997. These revised responses reflected changes in SWBT costing assumptions. The most recent response from SWBT was sent to Cox Telcom on February 24, 1997 and reflected revised assumptions regarding the facilities that Cox Telcom would require. In all, Cox Telcom has received four different responses from SWBT in the six months since the initial request for physical collocation. Assuming, SWBT does not encounter additional delays in construction (scheduled to be completed July 18, 1997) or in the testing and implementation of the interconnection trunks over the physical collocation facilities, ten or eleven months will have elapsed between the initial request and the operational completion of the physical collocation arrangements that Cox Telcom requested. Such delays make it difficult for Cox Telcom to plan its operations and impossible to make any commitments to prospective customers regarding the availability of service and facilities.
7. SWBT's pricing for physical collocation also presents a significant barrier to using this method of interconnection. Under the interconnection agreement Cox

signed earlier this month, SWBT's initial charge for physical collocation at a single point in Oklahoma City is approximately eighty-nine thousand dollars (\$89,000). SWBT also will charge approximately eight hundred and twenty dollars (\$820) a month in recurring charges. I understand both of these rates to be significantly higher than charges in other parts of the country.

8. One additional concern raised by SWBT's physical collocation pricing is that it has changed significantly over time. SWBT's first pricing proposal to Cox was an initial charge of approximately three hundred seventy-seven thousand dollars (\$377,000) and monthly charges of approximately three thousand three hundred dollars (\$3,300) for a single point of interconnection. In light of SWBT's subsequent pricing proposals, it is apparent that these prices were not cost-based or included costs which should not have been allocated to these facilities. It also seems likely to me that the intent of SWBT's first pricing proposal was to discourage physical collocation by making it prohibitively expensive. Cox Telcom would not have purchased physical collocation at those prices, and I doubt that any carrier that is not laboring under the burden of SWBT's enormous bargaining leverage would either.
9. Regardless of the method of interconnection selected by Cox Telcom (physical collocation has been chosen for Oklahoma City), SWBT still maintains tremendous control over Cox's ability to provide service and meet commitments made to customers through its ability to restrict the turn-up of actual interconnection trunks. As an example, trunks requested by Cox Telcom on April 15, 1997 for interconnection to the local tandem serving the Oklahoma City metropolitan area, have been scheduled for turn-up on June 20, 1997. This delay of more than two months is due to a reported lack of capacity in the SWBT tandem. SWBT initially refused to process these service requests pending final approval of the interconnection agreement by the Oklahoma

DECLARATION OF JEFF STOREY

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Corporation Commission. Only after receiving a promise from Cox to pay 100% of the costs incurred by Southwestern Bell in the provisioning of these trunks (up to \$30,000), did SWBT commit to begin processing the requests.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 30, 1997.


  
\_\_\_\_\_  
Jeff Storey  
Director, Network Operations

Exhibit B

Declaration of Carrington Phillip

### **DECLARATION OF CARRINGTON PHILLIP**

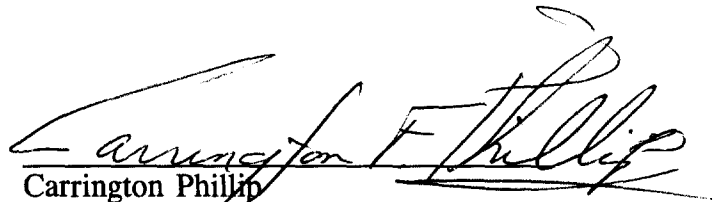
1. My name is Carrington Phillip. I am Director, State Regulatory Affairs of Cox Communications, Inc. ("Cox"). I am providing this declaration in connection with Cox's comments on the application of SBC Communications, Inc., for authority to provide in-region interLATA services in the State of Oklahoma.
2. My responsibilities include negotiation of interconnection agreements with incumbent local exchange carriers necessary for Cox to provide exchange service and exchange access in its markets across the country, including Oklahoma City. For that reason, I am personally familiar with Cox's telecommunications operations in the State of Oklahoma and with Cox's negotiations with SBC's affiliate, Southwestern Bell Telephone Company ("SWBT"), for an interconnection agreement. The information provided in this declaration is based on my personal knowledge.
3. Cox's indirect subsidiary Cox Oklahoma Telcom, Inc. ("Cox Telcom") was certificated to provide local exchange and exchange access services in Oklahoma on February 28, 1997. Cox Telcom initially requested the commencement of interconnection negotiations with SWBT on October 23, 1996. Those negotiations resulted in an interconnection agreement that was executed on April 10, 1997. The interconnection agreement was filed by Cox Telcom with the Oklahoma Corporation Commission (the "OCC") on April 28, 1997. It has not been approved by the OCC and therefore is not yet in effect.

4. During the negotiation process, SWBT engaged in behavior that was of concern to Cox. In particular, it was my experience that SWBT was unwilling to negotiate on many substantive issues, including prices for unbundled elements. While SWBT would agree to change some of the language in the agreement, Cox Telcom was unable to obtain compromise language from SWBT on any meaningful substantive issue related to rates and prices for unbundled elements and rates for transport and termination. Although Cox Telcom ultimately entered into an agreement with SWBT, it did so for reasons relating to the requirements of Cox's business plans, not because it believed it had obtained favorable, or even acceptable, terms from SWBT.
5. In addition, following what Cox believed were the final, definitive negotiations on the agreement, SWBT provided Cox with an agreement for signature that contained several provisions that were at variance with the terms agreed to by the parties. In fact, the agreement provided by SWBT included language that had appeared in SWBT's first draft of the agreement and had been changed early in the negotiation process. The changes unilaterally made by SWBT included increasing installation intervals for some service elements from a period of 90 days to as much as 120 days, adding a binding arbitration provision to the collocation provisions of the agreement and even substituting the term "Local Service Provider" for Cox Telcom's name in the agreement. Correcting these unilateral changes delayed the execution and filing of the agreement by approximately two weeks.

DECLARATION OF CARRINGTON PHILLIP  
PAGE 3

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 30, 1997.



Carrington Phillip  
Director, State Regulatory Affairs



## CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, of the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 1st day of May, 1997, I caused copies of the foregoing "Comments" to be served via first-class mail, postage prepaid (except where indicated as via hand-delivery), to the following:

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\*The Honorable Susan Ness  
Commissioner  
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Tammi A. Foxwell

\*Via Hand Delivery.